NO. 84916-1

SUPREME COURT OF THE STATE OF WASHINGTON

In Re the Dependency of J.H., a minor

ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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I. STATEMENT OF FACTS

Mr. Gregory Hyde requests that the Washington State Supreme Court grant discretionary review of the Spokane County Superior Court, Juvenile Division's July 1, 2009 order dismissing dependency of Mr. Hyde's son, J.H.

On November 13, 2008, the Department of Social and Health Services ("the Department") filed a dependency petition regarding J.H. Three days earlier, J.H.'s mother and her husband had been arrested on drug related charges, and law enforcement had placed the child in the Department's custody through an Authorization for Emergency Placement. The mother was ordered to engage in services and UA testing. A shelter care hearing was held on November 14, 2008, and the mother agreed that J.H. would remain out of her care, placed with maternal grandparents. J.H. could not be placed with Mr. Hyde because Mr. Hyde was, and still is, incarcerated for Rape in the First Degree with Aggravating Circumstances and Kidnapping in the First Degree with Sexual Motivation and Aggravating Circumstances.

On December 17, 2008, an agreed order of dependency and order of disposition was entered as to the mother. At this time, J.H. was returned to the mother's care under certain conditions. On July 1, 2009, after

reviewing the case and hearing arguments, the court found good cause to dismiss the dependency regarding J.H., despite Mr. Hyde's objections. On August 5, 2009, the Superior Court, Juvenile Division ordered the dismissal of the dependency of J.H.

Mr. Hyde has appealed several matters relating to this dependency action. On May 22, 2009, Mr. Hyde sought discretionary review of the Court of Appeals requesting review of a Superior Court decision denying the Department's motion to remove J.H. from his mother's care. On July 2, 2009, Mr. Hyde filed a second Motion for Discretionary Review requesting review of the Superior Court's July 1, 2009 decision to dismiss the dependency. These two matters were consolidated under No. 281272.

On July 31, 2009, Mr. Hyde filed three additional Notices of Appeal. They include: A Notice of Appeal regarding the July 15, 2009 Dependency Review Hearing Order in which the court ruled that the dependency would be dismissed on July 31, 2009; a Notice of Appeal regarding the July 29, 2009 Dependency Review Hearing Order stating that the dependency will be dismissed on July 31, 2009; and a Notice of Discretionary Review seeking review of the Superior Court order filed on July 30, 2009 denying Mr. Hyde's motion to revise a Court Commissioner's ruling to deny his motion to vacate the dependency and disposition order.

On October 23, 2009, Commissioner Joyce McCown consolidated all of Mr. Hyde's appeals, and dismissed them all, concluding that Mr. Hyde was not an "aggrieved party" and that the trial court's ruling did not affect a legally protected interest of Mr. Hyde. Mr. Hyde moved the Court of Appeals to modify the commissioner's ruling, but his motion was denied. Mr. Hyde seeks discretionary review of this order denying his motion to modify.

II. INTRODUCTION

The Department's position is that the Supreme Court should deny discretionary review on two separate grounds. First, Mr. Hyde is not entitled to discretionary review because he has not shown that the Court of Appeals committed an error under RAP 13.5(b) by denying his motion to modify. Second, as stated by Commissioner McGown, Mr. Hyde is not an "aggrieved party" under RAP 3.1 because, with the dismissal of the dependency, Mr. Hyde's parental rights remain untouched. The grounds for Mr. Hyde's appeal are moot, and if he seeks to remove J.H. from his mother's care, Mr. Hyde must start a suit in the Family Law Division of the Superior Court.

III. MR. HYDE HAS NOT SHOWN THAT DISCRETIONARY REVIEW IS APPROPRIATE UNDER RAP 13.5(B)

Mr. Hyde fails to meet the standard necessary for discretionary review of this Court because he has not shown that the Court of Appeals committed an "obvious" or "probable" error or that the Court of Appeals order "departed from the accepted and usual course of judicial proceedings." RAP 13.5(b) governs requests for review of interlocutory decisions and states:

Discretionary review of an interlocutory decision of the Court of Appeals will be accepted by the Supreme Court only:

> (1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or
> (2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or
> (3) If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

Washington courts "generally disfavor interlocutory appeals" unless the appellant can demonstrate obvious or probable error. *Hartley v. State*, 103 Wn.2d 768, 774, 698 P.2d 77 (1985) (citing *Maybury v. Seattle*, 53 Wn.2d 716, 721, 336 P.2d 878 (1959)) *See also Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 105 Wn. App. 813, 821, 21 P.3d 1157 (Ct. App. 2001) (stating "discretionary review is not favored because it

lends itself to piecemeal, multiple appeals."); *Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 652 P.2d 948 (1982) (holding "the trial court had committed 'obvious or probable error' in its interpretation of the tort reform act.").

In his Motion for Discretionary Review, Mr. Hyde emphasizes the fact that he has "a fundamental liberty and private interest in the care and custody of [his] minor child," but fails to show how this right has been violated. *See* Petitioner's Motion for Discretionary Review, 3. Mr. Hyde argues that the Court of Appeals adopted an "unbalanced view" when considering his consolidated appeals, but he fails to show that the court committed an erroneous action as set out in RAP 13.5(b). *See* Petitioner's Motion for Discretionary Review, 3. Mr. Hyde has not demonstrated that that Court of Appeals "committed an obvious error which would render further proceedings useless" or that the court "committed probable error . . . [that] substantially alters the status quo . . ." or that the court "departed from the accepted and usual course of judicial proceedings." *See* RAP 13.5(b). Thus, discretionary review is not warranted. Should this Court find otherwise, however, the Department would argue that Mr. Hyde does not have a statutory right to appeal because he is not an "aggrieved party."

IV. MR. HYDE IS NOT AN AGGRIEVED PARTY AND DOES NOT HAVE A RIGHT TO SEEK DISCRETIONARY REVIEW

Not all Superior Court decisions may be appealed as a matter of right. *See* RAP 2.2(a). RAP 3.1 states that "[o]nly an aggrieved party may seek review of an appellate court." An "aggrieved party" is a person whose "personal right or pecuniary interest [has] been affected" by the lower court's decision. *State v. Taylor*, 150 Wn.2d 599, 603, 80 P.3d 605 (2003) "An aggrieved party is not one whose feelings have been hurt or one who is disappointed over a certain result." *Id.* at 603. In determining whether a person is "aggrieved" the question is "whether the *trial court* entered a judgment that substantially affects a legally protected interest of the would-be appellant." *Polygon Nw. Co. v. Am. Nat'l Fire Ins. Co.*, 143 Wn. App. 753, 768, 189 P.3d 777 (2008), *review denied* 164 Wn.2d 1033, 197 P.3d 1184 (2008). In *Taylor*, the Court considered whether a defendant was aggrieved by an order dismissing criminal charges against him without prejudice. *Taylor*, 150 Wn.2d at 600. The Court concluded the defendant was not "aggrieved" because the charge against him was dismissed and as a result he was under no restrictions. *Id* at 603. The Court went so far as to say that rather than being an "aggrieved" party, the defendant in *Taylor* actually received a "favorable result" when the criminal charges were dropped against him. *Id.*

Likewise, Mr. Hyde is not an aggrieved party because the dependency regarding J.H. has been dismissed and Mr. Hyde's parental rights remain intact. Like the defendant in *Taylor*, most people would view the dismissal of the dependency as an outcome favorable to Mr. Hyde because J.H. has been placed back with his mother. *See Taylor*, 150 Wn.2d at 603. However, Mr. Hyde argues that the Department has acted contrary to the "intent and purpose of RCW 13.34 et. seq." and has ignored Mr. Hyde's "constitutional interest in the welfare of his minor child." Petitioner's Motion for Discretionary Review, 3. The trial court's decision to dismiss the dependency does not substantially affect a legally protected interest of Mr. Hyde. Dismissal of the case removed any restrictions imposed on Mr. Hyde's parental rights by the court in the dependency proceedings. Furthermore, any concerns Mr. Hyde retains regarding the mother's parenting of J.H. may be addressed in the Family Law Division of the Superior Court. With the dismissal of the dependency, Juvenile Court no longer has exclusive jurisdiction over the child.

V. CONCLUSION

Mr. Hyde is not entitled to discretionary review on two separate grounds. First, Mr. Hyde should be denied discretionary review under RAP 13.5(b) because he has not shown that the Court of Appeals

committed an obvious or probable error in denying his motion to modify the commissioner's ruling. Mr. Hyde has not shown that the Court of Appeals made *any* type of error. Mr. Hyde argues that his parental rights have been violated by this decision, but this is not true. The Superior Court has dismissed the dependency regarding J.H., and Mr. Hyde's parental rights remain intact. Should this Court find that review under RAP 13.5(b) is in fact warranted, Mr. Hyde is still not entitled to appellate review because he is not an "aggrieved party." Mr. Hyde's personal and pecuniary interests have not been affected by dismissal of the dependency. Furthermore, discretionary review of the Court of Appeals decision will not provide Mr. Hyde with the remedy he seeks. If Mr. Hyde aspires to prove that J.H.'s mother is an unfit parent and seeks to remove J.H. from his mother's care, then his remedy lies with the Family Law Division of the Superior Court.

RESPECTFULLY SUBMITTED this 9th day of September, 2010.

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